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FACT VS FICTION IN THE KEY FINDINGS & KEY RECOMMENDATIONS OF THE SENATE POST-AUDIT AND OVERSIGHT COMMITTEE FROM THEIR DAM SAFETY REPORT

*Attached please find the Administrations response to key findings and key recommendations in the recent report "Decades of Neglect: Dam Safety and Maintenance in Massachusetts" issued by the Post Audit and Oversight Committee. (*The bold italics indicate a reply to each point made by the Committee in their report issued on May 17, 2006. – as compiled by the Executive Office of Environmental Affairs).*

Key Findings:

- Nearly three decades after the University of Massachusetts' report recognized Massachusetts' failure to create a complete inventory of dams, an accurate inventory still does not exist.

For the first time in state history, a complete and through inventory of all dams located in the Commonwealth is currently underway. An initial inventory will be ready by July 1, 2006 in accordance with the new dam safety regulations.

- DCR under the Romney Administration did not adopt dam safety regulations until three years after they were required by a 2002 state statute.

The statute directing the former Department of Environmental Management (DEM) was not passed by the Legislature until the final months of the 2002 legislative session. In the budget passed by the Legislature in June of 2003, DEM was abolished and its responsibilities passed the newly formed

Department of Conservation & Recreation (DCR). Shortly thereafter, the lengthy regulatory promulgation process, with mandated months of public hearings and public comment periods, resulted in the final new regulations being published in fall of 2005.

- Nearly 49% of dams have not been assessed for any type of structural condition, while at least 5% of dams have no known hazard potential classification.

Not true.

There is no way to properly determine the number of dams that have not been assessed until the initial inventory is complete. The responsibility for these dam inspections rests NOT with the state but with the private dam owners.

- In 2001, only 14% of high-hazard dams had Emergency Action Plans (EAPs). In 2002, the number decreased to 8%, well below the national average of 36%.

These facts are what led to the passage of the dam safety legislation in 2002 and promulgation of the dam safety regulations. Once fully implemented, all high hazard potential dams MUST have an EAP on file or the owner will face significant fines.

- Enforcement provisions in environmental state laws are significantly higher than the penalties in the Commonwealth's dam safety statute.

Fines and penalties vary and are always subject to review and change.

- The state employs only seven full-time equivalent (FTE) dam safety staff (3.5 to run the ODS regulatory program and 3.5 to maintain DCR dams) to monitor the state's 2,950 dams. Requests for increased staffing levels were recently denied by the Romney Administration.

Not true.

The state's Office of Dam Safety has been given more than \$1.6 million in capital funding for FY '06 to ensure that they can secure engineering contractors to assist the work of the state's Office of Dam Safety (ODS). The operating and capital plans for FY '07 anticipate spending at least that amount. (It is important to note here that the new regulations DO NOT require any new additional state inspections. Therefore, ODS employees can for the first time focus exclusively on reviewing dam inspection reports filed by owners.

- Over the last ten years, ODS has received inconsistent and inadequate state funding, which has impaired its ability to manage an effective dam safety program.

The Romney Administration is making the first comprehensive reform of the state's dam safety program. The Governor's FY'07 state budget proposal provides the first ever line-item exclusively for ODS operations and that funding combined with capital funding will give ODS the tools it needs to do its job effectively.

- In October, ODS requested \$1.045 million dollars to implement the new dam safety regulatory program. In the FY07 budget, Governor Romney provided only \$512,476.

Not true, as previously stated.

The state's Office of Dam Safety has been given more than \$1.6 million in capital funding for FY '06 to ensure that they can secure engineering contractors to assist the work of the state's Office of Dam Safety (ODS). The operating and capital plans for FY '07 anticipate spending at least that amount. (\$512,000 in operating funds and the remainder paid for with capital funds).

(It is important to note here that the new regulations DO NOT require any new additional state inspections. Therefore, ODS employees can for the first time focus exclusively on reviewing dam inspection reports filed by owner).

Key Recommendations:

1. ODS must develop a complete and accurate inventory of dams by December 15, 2006.

This is already in progress, as previously noted. Initial inventory will ready by July 1st.

2. ODS must inspect all high and significant-hazard dams that were not included in the emergency inspection order, regardless of their condition.

This is now the responsibility of the dam owners and NOT the state.

3. ODS must ensure Emergency Action Plans (EAPs) are developed for all high and significant-hazard dams and available for dam owners and local and state dam safety officials.

Already required under the terms of the new dam safety regulations.

4. Enforcement provisions need to be increased from \$500 per day up to \$25,000 per violation for high or significant-hazard dams. Fines collected should be dedicated to the Dam Safety Trust and be used for future dam safety needs.

Additional fines and penalties may warrant additional review. The new fine structure is among the most stringent in the nation.

5. Significantly increase funding for the dam safety program, in line with requests made by ODS. In FY07, provide \$1.045 million to ODS for the implementation of the new dam safety regulatory program. Ensure future funding for ODS is maintained.

Already accomplished through existing funds and capital funds as previously noted and planned for FY '07 pending legislative appropriations.

6. Provide \$10.3 million for capital improvements to DCR owned dams. Priority should be given to high and significant-hazard dams, especially those in unsafe or

poor condition. Funding must also be made available for the development of EAPs for state owned dams.

The DCR 5-year capital plan already provides for AT LEAST \$10 million over five years for the repair of all DCR owned dams and the development of EAPs when mandated by the new regulations.

7. Create a \$20 million Dam Safety State Revolving Loan Fund (SRF) to provide low interest loans to assist qualifying private and municipal owners with assessment, repair and removal of dams. Priority should be given to high and significant-hazard dams in unsafe or poor structural condition.

Low-interest State Revolving Fund Loans (SRFs), funded by state dollars, are already available to municipalities for dam safety and repair.

8. Provide additional dam safety and maintenance full-time equivalent (FTE) staff to ensure public safety is maintained. An additional 8.5 FTE staff are required for ODS to implement the state's new dam safety regulations. An additional 4.5 FTE staff are needed for DCR to address the current backlog of state owned dams in poor repair.

Appropriate resources are already being provided for ODS through capital funding -- \$1.6 million for FY'06. For FY'07 both operating and capital funding will provide AT LEAST that amount for the dam safety program.